

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SYLVESTER JOHNSON,

Petitioner,

v.

Case No. 8:19-cv-2297-CEH-TGW

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

_____ /

ORDER

This matter was remanded by the Eleventh Circuit Court of Appeals to this Court “for the limited purpose of determining whether Appellant Sylvester Johnson merits reopening of the appeal period under Federal Rule of Appellate Procedure 4(a)(6).” (Doc. 58 at docket p. 2). The Court concludes Mr. Johnson does not merit reopening of the appeal period.

On July 27, 2022, the Clerk mailed a copy of the July 26, 2022 Order (Doc. 48) denying Mr. Johnson’s habeas petition, the Judgment entered on July 27, 2022 (Doc. 49), and the July 27, 2022 Order (Doc. 51) granting Mr. Johnson’s request for copies to Mr. Johnson. Under Fed.R.App.P. 4(a)(1)(A), the notice of appeal must have been filed within 30 days of the July 27, 2022 Judgment, or on August 26, 2022. Mr. Johnson’s Notice of Appeal was date stamped by his prison November 17, 2022

(Doc. 54).

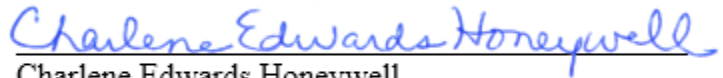
The Eleventh Circuit found the Notice of Appeal was untimely but remanded to determine whether Mr. Johnson merits reopening of the appeal period under Rule 4(a)(6). Under Rule 4(a)(6), the court may reopen the time to file an appeal, for a period of 14 days, if the following conditions are met: (A) the court finds that the moving party did not receive notice of entry of the judgment or order sought to be appealed within 21 days after entry; (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice of the entry, whichever is earlier; and (C) the court finds that no party would be prejudiced. Rule 4(a)(6), Fed.R.App.P.

Mr. Johnson admits he received notice of the July 26, 2022 final order on October 19, 2022 (Doc. 61 at p. 1). Therefore, he was required to file his motion to reopen the time to appeal within 14 days of that date, or by November 2, 2022. Fed.R.App.P. 4(a)(6)(B). He filed his motion to reopen (within his Notice of Appeal) on November 17, 2022 (Doc. 54).¹ Because he did not file the motion to reopen by November 2, 2022, it is untimely and cannot meet the second condition of Rule

¹ Although the Court received the motion to reopen/Notice of Appeal on November 21, 2022 (*see* Doc. 54), a prisoner's motion is deemed filed on the day the motion is delivered to prison officials for mailing. *See Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001) (*per curiam*) (holding that absent evidence to the contrary, a prisoner's pleading is deemed filed in accordance with the mailbox rule when it is executed and handed to prison officials for mailing).

4(a)(6). Accordingly, Mr. Johnson's motion to reopen the time for appeal under Fed.R.App.P. 4(a)(6) (Doc. 54) is **DENIED**.

ORDERED in Tampa, Florida, on July 14, 2023.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:
cc: Sylvester Johnson, *pro se*
Counsel of Record
Clerk, 11th Circuit Court of Appeals